

Tiffany L. Lee (Bar No. 303007)
tiffanylee@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
Telephone: (206) 359-3304
Facsimile: (206) 359-4404

*Attorney for Non-Party
Nintendo of America Inc.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case No. 3:20-cv-05671-JD

MPL No. 3:21-md-02981-JD

**DECLARATION OF KRISTOPHER KIEL
PURSUANT TO LOCAL RULE 79-5(f)(3)
IN SUPPORT OF ADMINISTRATIVE
MOTION TO SEAL**

I, Kristopher Kiel, declare as follows:

1. I am currently Senior Corporate Counsel in the Legal Department at Nintendo of America Inc. (“NOA”). I have worked at NOA since 2014. NOA is one of many subsidiaries of Nintendo Co., Ltd. (“NCL”), a corporation based in Japan. Although NCL and each of its subsidiaries (including NOA) are separate companies, for purposes of this declaration I will refer to NCL and its subsidiaries together as “Nintendo.” The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could testify to those facts.

2. In my current role at NOA, I am responsible for managing various legal matters including litigation matters. In my role I am aware of various agreements that Nintendo has with third parties and confidential financial and business information associated with those agreements and other business arrangements. Based on my work experience, I am familiar with Nintendo's business and strategies. Nintendo keeps business strategy information confidential to protect

1 itself from competitive harm. A significant part of my role entails being aware of and protecting
2 the confidentiality of that information.

3 3. I understand that Exhibits 384 and 1524 in *In re Google Play Store Antitrust*
4 *Litigation*, No. 3:21-md-02981-JD (N.D. Cal) and *Epic Games, Inc. v. Google LLC*, No. 3:20-cv-
5 05671-JD (N.D. Cal.) are to be filed on the case docket. Exhibits 384 and 1524 contain
6 Nintendo's confidential information that was previously produced by Google and designated
7 "Highly Confidential - Outside Counsel Eyes Only" pursuant to the operative protective orders
8 (see, e.g., Case No. 3:21-md-02981-JD, Dkt. No. 248).

9 4. I make this declaration on behalf of Nintendo in support of an Administrative
10 Motion to Seal.

11 5. I have reviewed certain portions of Exhibits 384 and 1524 provided to Nintendo.
12 The portions of Exhibits 384 and 1524 I reviewed contain non-public information relating to
13 Nintendo that is sensitive and highly confidential. The information would potentially cause
14 substantial competitive harm to Nintendo if disclosed to the public.

15 6. Several portions of the documents I reviewed relate to competitively sensitive
16 information about Nintendo's contracts and business relationship with Google. The pages labeled
17 -025 (GOOG-PLAY-004146713.R), -042 (GOOG-PLAY-004146730.R), and -043 (GOOG-
18 PLAY-004146731.R) in Exhibit 384; and -007 (GOOG-PLAY-010849902) in Exhibit 1524
19 reference whether Nintendo has executed contracts with Google that include certain substantive
20 provisions. The pages labeled -011 (GOOG-PLAY-004146699.R), -042 (GOOG-PLAY-
21 004146730.R), -043 (GOOG-PLAY-004146731.R) in Exhibit 384; and -028 (GOOG-PLAY-
22 010849923), -035 (GOOG-PLAY-010849930), and -037 (GOOG-PLAY-010849932) in Exhibit
23 1524 include financial and term information relating to a deal between Nintendo and Google.
24 The pages labeled -014 (GOOG-PLAY-004146703.R) and -044 (GOOG-PLAY-004146732.R) in
25 Exhibit 384; and -027 (GOOG-PLAY-010849922) in Exhibit 1524 contain a chart with a row that
26 refers to "Nintendo" and describes financial performance information about a contractual
27 arrangement between Nintendo and Google.

28 7. Nintendo treats its contracts and the specific provisions within them as highly

1 confidential. Nintendo's agreements with Google reflect sensitive information about Nintendo's
2 business strategies, including strategies for negotiation with partners and developing content and
3 partnering with content platform operators such as Google. The provisions and details about the
4 agreements' arrangement, terms, and negotiation are not available to the public. Disclosure of
5 that information could lead to substantial competitive harm to Nintendo because competitors
6 could use the provisions in Nintendo's contracts with Google to Nintendo's detriment.
7 Competitors seeking to make inroads with Google could copy the contractual provisions that
8 Nintendo negotiated with Google. For example, competitors could attempt to structure their deals
9 to match the financial and term provisions of Nintendo's contract with Google. That would
10 obviate any competitive advantage Nintendo obtained through its negotiations with Google.
11 More broadly, competitors could adopt Nintendo's general approach to working with content
12 platform operators and, by doing so, gain ground on Nintendo in competing to develop and
13 distribute content.

14 8. Many of the documents I reviewed include highly confidential financial
15 information. The pages labeled -015 (GOOG-PLAY-004146703.R), -019 (GOOG-PLAY-
16 004146707.R), -044 (GOOG-PLAY-004146732.R), and -058 (GOOG-PLAY-004146746.R) in
17 Exhibit 384; and -016 (GOOG-PLAY-010849911), -027 (GOOG-PLAY-010849922), -030
18 (GOOG-PLAY-010849925), and -041 (GOOG-PLAY-010849936) in Exhibit 1524 contain a
19 chart and line referring to "Nintendo" that describe confidential financial details reflecting terms
20 and performance of the business relationship between Nintendo and Google.

21 9. The growth, revenue, value, cost, spend, rankings, bookings, margins, market,
22 share, and other performance information described in these documents is highly confidential and
23 competitively sensitive information. This type of financial and marketing information is non-
24 public. Nintendo keeps this information secret and confidential. Publicly disclosing growth,
25 revenue, value, cost, spend, rankings, bookings, margins, market, and share information relating
26 to Nintendo and its business dealings with Google would result in competitive harm to Nintendo.
27 Competitors could leverage that information to gain a more thorough understanding of
28 Nintendo's business and marketing strategies and priorities relating to content development for

1 Google and in general. Competitors could use that information against Nintendo by taking steps
2 to counteract Nintendo's business strategies and priorities, such as Nintendo's approach to
3 content development. The highly confidential financial and marketing information would provide
4 competitors with an advantage they would not have if the information remained non-public.

5 10. Some of the material I reviewed relates to Nintendo's relationship with Google or
6 other business partners. The pages labeled -014 (GOOG-PLAY-004146702.R), -019 (GOOG-
7 PLAY-004146707.R), and -052 (GOOG-PLAY-004146740.R) in Exhibit 384; and -038 (GOOG-
8 PLAY-010849933) in Exhibit 1524 describe Nintendo's relationship and negotiation strategy
9 with Google. The pages labeled -007 (GOOG-PLAY-010849902) and -027 (GOOG-PLAY-
10 010849922) in Exhibit 1524 reflect how Nintendo and Google view each other as partners and
11 their respective market positions. The page labeled -044 (GOOG-PLAY-004146732.R) in
12 Exhibit 384 reflects sensitive details about Nintendo's relationship with a third-party business
13 partner.

14 11. This non-public and highly confidential information relating to the relationship
15 between Nintendo and its business partners is competitively sensitive. Nintendo has developed a
16 relationship with its business partners over many years. If non-public and confidential
17 information about Nintendo's relationship with its business partners were disclosed publicly, a
18 competitor could use that information to Nintendo's detriment by copying Nintendo's strategy for
19 dealing with its business partners, including Nintendo's approach to interacting and negotiating
20 with business partners and the unique combination of contractual arrangements entered into by
21 the two companies. That could lead to Nintendo receiving less attention from business partners
22 while other competing content developers receive more, which would result in competitive harm
23 to Nintendo. Thus, revealing details about Nintendo's relationship with business partners could
24 potentially undermine Nintendo's competitiveness.

25 12. The chart below summarizes my review of material from Exhibits 384 and 1524.
26
27
28

| Exhibit Number | Document Description | Portion Sought to Be Sealed | Reason(s) for Sealing Request | |
|---|---|--|--|--|
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 | Exhibit 384 Exhibit 384 Exhibit 384 Exhibit 384 Exhibit 384 Exhibit 384 Exhibit 384 | Games Velocity Program V1 Business Impact Assessment Games Velocity Program V1 Business Impact Assessment | Excerpts referencing confidential Nintendo information on the page labeled -011 (GOOG-PLAY-004146699.R) Excerpts referencing confidential Nintendo information on the page labeled -014 (GOOG-PLAY-004146702.R) Excerpts referencing confidential Nintendo information on the page labeled -015 (GOOG-PLAY-004146703.R) Excerpts referencing confidential Nintendo information on the page labeled -019 (GOOG-PLAY-004146707.R) Excerpts referencing confidential Nintendo information on the page labeled -025 (GOOG-PLAY-004146713.R) Excerpts referencing confidential Nintendo information on the page labeled -042 (GOOG-PLAY-004146730.R) | Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information. References Nintendo's relationship with Google and the parties' sentiment before and after execution of a confidential agreement. References whether Nintendo has executed contracts with Google that include certain substantive provisions and describes confidential financial details reflecting terms and performance of the business relationship between Nintendo and Google. Describes Nintendo's relationship and negotiation strategy with Google and discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial performance information. References the status of Nintendo's relationship with Google, including the possibility of extending existing confidential contractual agreements. Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information. |

| Exhibit Number | Document Description | Portion Sought to Be Sealed | Reason(s) for Sealing Request | |
|---|--|--|--|--|
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 | Exhibit 384 Exhibit 384 Exhibit 384 Exhibit 384 Exhibit 1524 Exhibit 1524 | Games Velocity Program V1 Business Impact Assessment Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on the page labeled -043 (GOOG-PLAY-004146731.R) Excerpts referencing confidential Nintendo information on the page labeled -044 (GOOG-PLAY-004146732.R) Excerpts referencing confidential Nintendo information on the page labeled -052 (GOOG-PLAY-004146740.R) Excerpts referencing confidential Nintendo information on the page labeled -058 (GOOG-PLAY-004146746.R) Excerpts referencing confidential Nintendo information on the page labeled -007 (GOOG-PLAY-010849902) Excerpts referencing confidential Nintendo information on the page labeled -016 (GOOG-PLAY-010849911) | Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information. Discloses competitively sensitive information about Nintendo's contracts and the performance of Nintendo's business relationship with Google, including financial information and commitments. References Nintendo's relationship with Google and discloses the parties' sentiment before and after execution of a confidential agreement, including sentiment regarding financial terms of the parties' contractual agreements. Discloses competitively sensitive information about Nintendo's contracts and the performance of Nintendo's business relationship with Google. Discloses competitively sensitive information about Nintendo's contracts with Google, including term information and information about the likelihood of future contractual agreements between Nintendo and Google. Discloses competitively sensitive information about the performance of Nintendo's business relationship with Google. |

| Exhibit Number | Document Description | Portion Sought to Be Sealed | Reason(s) for Sealing Request | |
|--|-----------------------------|---|---|--|
| 1 2 3 4 5 6 7 | Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on Page -027 (GOOG-PLAY-010849922) | Describes information about a contractual arrangement between Nintendo and Google, including confidential financial details reflecting terms and performance of the business relationship between Nintendo and Google, and reflecting how Nintendo and Google view each other as partners. |
| 8 9 10 11 12 | Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on Page -028 (GOOG-PLAY-010849923) | Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information relating to a deal between Nintendo and Google. |
| 13 14 15 16 17 | Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on the page labeled -030 (GOOG-PLAY-010849925) | Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information. |
| 18 19 20 21 | Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on Page -035 (GOOG-PLAY-010849930) | Contains competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information relating to a deal between Nintendo and Google. |
| 22 23 24 25 26 27 28 | Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on Page -037 (GOOG-PLAY-010849932) | Contains competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information relating to a deal between Nintendo and Google and negotiating status. |

| Exhibit Number | Document Description | Portion Sought to Be Sealed | Reason(s) for Sealing Request |
|-----------------------|---|---|--|
| Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on the page labeled -038 (GOOG-PLAY-010849933) | Contains competitively sensitive information about Nintendo's contracts and business relationship with Google, including information about financial performance, negotiating status, and financial commitments. |
| Exhibit 1524 | Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension | Excerpts referencing confidential Nintendo information on Page -041 (GOOG-PLAY-010849936) | Contains highly confidential financial information, including confidential financial details reflecting terms and performance of the business relationship between Nintendo and Google. |

I declare under the penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of December 2023 in Dexter, Michigan.



Kristopher Kiel